SUPREME COURT, U.S.
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No. 92-1762

In The

Supreme Court of the United States

October Term, 1993

AUGUSTUS J. SIMMONS,

Petitioner,

v.

EMIL H. FRANKEL, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

In addition to tendering an argument that the doctrine of res judicata, *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 43 S.Ct. 288, 66 L.Ed. 396 (1923), prohibits Federal Courts from attacking State Court judgments (which will be succinctly addressed immediately following this introduction), Respondents have asserted that the Connecticut Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980), affirmed two Superior Court judgments clearly and absolutely vesting title to three (3) parcels, A, C, and D, with the State of Connecticut. This holding was reached from a claimed valid "Connecticut" judgment. Brief in opposition at 6. As this Court will

discover, *Rooker,* supra, offers no sanctuary where no proceedings were instituted, see Petition for Certiorari at 10-11 and jurisdiction cannot be conferred upon the State Court by the consent of the parties or by waiver. *Guerin v. Norton,* 167 Conn. 282, 283, 355 A.2d 255 (1974); *Gores v. Rosenthal,* 148 Conn. 218, 221, 169 A.2d 639 (1961); *Cone v. Darrow,* 148 Conn. 109, 112, 167 A.2d 852 (1961).

Petitioner's action under 42 U.S.C. §1983 alleged various Constitutional defects in rules and procedures, rather than attacking the decision of the State Supreme Court over which the District Court has jurisdiction. Under the Due Process Clause Connecticut must comply with, abide by, and incorporate in negotiations or condemnations the applicable rules and regulations of the Uniform Act promulgated for Federal or Federally-assisted programs.

I. RESPONDENTS' RELIANCE ON A "CONNECTICUT" JUDGMENT IS UNAVAILING TO DEFEAT PETITIONER'S PROPERTY INTEREST CLAIM HEREIN.

Notwithstanding that Congress enacted the Uniform Real Property Acquisition Act in 1971 to curtail, eliminate the unscrupulous practices in acquiring real property for Federal and Federal-aid projects and Connecticut General Statute 8-129 outlines the procedure that must be followed for real property acquisition for public purposes, whether by purchase, exchange, gift or in the exercise of eminent domain, Petitioner has a cause of action for State deprivations of "rights secured" by "the laws" of the United States. *Maine v. Thibout,* 448 U.S. 1 (1980). The

policy involved in this action is the policy of the United States. It is not a matter that the States can regard or disregard at their will.

The matter or claim of a "valid" "Connecticut" judgment was addressed and answered by the Attorney General's office of the State of Connecticut on June 7, 1982, keeping in mind that *Simons v. Wetherall,* 180 Conn. 587, was reported in 1980. The same Attorney General's office has filed the Brief in Opposition and is in direct conflict with the context of Assistant Attorney General Victor Feingold, Esq., before Honorable Judge Dupont, A., beginning at page 17, it reads:

> MR. FEINGOLD: "Now, I am going to the question of another matter that Judge Shapiro seems to assume that he had the power to exercise authority when he entertained a motion of Assistant Attorney General McQueeney for execution of the judgment.
>
> I now direct your Honor, and invite your Honor's attention to another element of jurisdiction in the entire matter of Simmons against Wetherall. I might say that whenever I call your Honor's attention to the question of jurisdiction, in accordance with the law of the State, if lack of jurisdiction is brought to your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, your Honor cannot proceed on any of the proceedings until you resolve the issue of subject matter jurisdiction. If per chance the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so

long as this Court, the question of jurisdiction is called to your Honor's attention. The second point on lack of jurisdiction that I call your Honor's attention to, is that when Assistant Attorney General McQueeney came in with a motion for execution of an unsatisfied judgment, a concern of the State Referee, Judge Shapiro, was how to execute it. The judgment was not for money damages. As I recited before, the judgment on stipulation –

MR. SIMMONS: What was that? Would you please repeat that?

MR. FEINGOLD: The judgment was not for the payment of money damages insofar as the State was concerned. It was in favor of Mr. Simmons for the payment of an agreed-upon price for the sale of land. I do not believe that this judgment resulted in the payment of money damages. Consequently, Mr. Simmons could not get execution against the State, nor could the State get execution in the normal way that executions are given under the statute for judgment. So, Judge Shapiro heard the stalemate that arose here, and Mr. Simmons stated he was ready, willing and able and agreed to pay the agreed-upon price and refusing to execute and deliver a deed to the State. So, the Honorable Louis Shapiro, State Referee, acting under whatever he believed his statutory powers were as a State Referee, with all the powers of a judge of the Superior Court, undertakes to declare by court order, that title to the land is automatically vested in the State of Connecticut in accordance with the judgment. I refer your Honor to paragraph one of an order of Judge Shapiro, that is found in the case that your Honor recited by

docket number in the Superior Court, Simmons versus Wetherall, and also found on page 37 of the Supreme Court records and briefs relating to 180 Conn. at 587. Paragraph one of what purports to be an order of Judge Shapiro contained in four numbered paragraphs recite prior – paragraph one there is a recitation of a number of matters apparently furnished Judge Shapiro from the Land Records in East Granby under the name of Augustus J. Simmons. Now, included in the list of matters was the mortgage and agreement of Mr. Diamond, a mortgage of Thomas P. Byrne, a lis pendence of Leonidas Simmons, a judgment of CBT, an attachment of Hartford National Bank, a judgment of the applicant today, Leonard Allair, Et Al, an attachment of what purports to be an application of the applicant today, Valenti, a lease to Angelo Roncari and judgment, lien registration of applicant today, Patsy Valenti, Et Al, and a lis pendence of Patsy Valenti, Et Al, another lis pendence of Leonard Allair, Et Al. Well, in addition a lease seemingly recorded on March 16, 1978 to Westfield Valet Parking, Incorporated, and an attachment of David B. Salzman. It appears that in view of all these matters called to Judge Shapiro's attention, what the State of the title was, Judge Shapiro undertook without any motions before him, and without any proceedings, to enter an order other than the appearance of Mr. Simmons and the State, directing that all encumbrances be removed and that title to the premises described in Exhibit A attached hereto, together with covenance described in Exhibit B attached hereto, against the land described in said Exhibit B is and are vested in the State of

Connecticut in accordance with the judgment entered herein.

In no way do I understand that the terms of the judgment on stipulation empower any court to summarily invest title in the State of Connecticut. I take the position that Judge Shapiro had no statutory or any other authority, either as a State Referee, Judge of the Superior Court or acting as a Judge of the Superior Court, to pass title in this case to the State of Connecticut. It would appear that Judge Shapiro believed he had that power, and in doing so believed that he could now execute in his fashion as a judge, that he had previously entered in accordance with the stipulation. There is nothing in the terms of the stipulation, as I read it, that even obligated Mr. Simmons to execute a deed. Therefore, I come back to what I mentioned before. It is simply an executory agreement for the sale of real estate. Imperfect as it is, and maybe it didn't really accomplish what the parties intended it to do, it now has developed an unenforceable thing in my view. It may very well be that all of the cases that were supposed to have been consolidated and settled in the Superior Court, are not truly settled, and that all cases go back to the status quo they were in including the United States District Court pending cases that Mr. Simmons still will have to litigate in the Supreme Court, his title to the Bradley Field. He still will have to litigate his claim for money damages that was given to him by the Special Act of this Legislature where various defenses have been asserted. We are back with Mr. Simmons battling now in the Superior Court. Well, that is the turn of the screw on this type of case, because I cannot see the way the proceedings

have gone at this stage that this judgment can properly be enforced by either party."

Appearing at the same session on June 7, 1982 was Attorney Walter Bass representing Mr. and Mrs. Patsy Valenti and Mr. and Mrs. Leonard Allair, exclusive lienholders against Parcel "C" where F.A.A. instrumentation is located, which testimony illuminates the lack of any proceedings.

ATTORNEY BASS at page 26 states: "A very short rebuttal, your Honor.

First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the Court to hear this case. Secondly, your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the Court that in the citation, my two clients were listed under the care of my office. I will state to the Court that I have never been served any citation nor has my client ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter. Secondly, perhaps Section 48-11 is not applicable. I would request that the Court – excuse me. I will withdraw that."

The request for compensation was DENIED.

II. THE PROVISIONS OF RESPONDENTS' BRIEF IN OPPOSITION ALSO PROFFER THE "NEW" CONTENTION THAT, AFTER 20 YEARS OF LITIGATION, THE SUPREME COURT AFFIRMED TWO SUPERIOR COURT JUDGMENTS.

In making submissions to the United States Supreme Court in attempts to deter the granting of a writ, it is important that the information in Respondents' Brief In Opposition is factual and not misleading.

The claimed existence of two (2) Superior Court Judgments, see Brief In Opposition at 2, should and must be supported with a Docket Number, date and Superior Court Judge who rendered the Judgment. The failure to so provide is tantamount to an admission of a violation of the rules of professional conduct of the Practice Book.

III. RESPONDENTS' REASONS FOR DENIAL OF THE PETITION AT PAGE 5 INCLUDES AND STATES THE APPEALS COURT DECISION IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

The decision of the Second Circuit Appeals Court is in direct conflict with *United States v. General Motors*, 323 U.S. 373, 379-384 (1945), wherein the United States has been required to pay compensation for leasehold interests, analogous with the leasehold interest claimed by the Federal Aviation Administration.

The decision of the Appeals Court is in direct conflict with *United States v. Causby*, 328 U.S. at 261 wherein the low overflights were analogous to an invasion of the

surface as committed by F.A.A. and more recently by the United States Army Corps of Engineers.

The United States Supreme Court has repeatedly recognized that when a governmental body takes private property for public use, a contractual obligation to pay compensation may be implied. *United States v. Dickinson*, 331 U.S. 745, 748, 67 S.Ct. 1382, 1384, 91 L.Ed. 1789 (1947); *Campbell v. United States*, 266 U.S. 368, 370-71, 45 S.Ct. 115, 116, 69 L.Ed. 328 (1924); *United States v. Lynah*, 188 U.S. 445, 458-68, 23 S.Ct. 349, 352-56, 47 L.Ed. 539 (1903); *United States v. Great Falls Mfg. Co.*, 112 U.S. 645, 656-57, 5 S.Ct. 306, 311, 28 L.Ed. 846 (1884). See *United States v. Clark*, 445 U.S. 253, 255-56 n.2, 100 S.Ct. 1127, 1129 n.2, 63 L.Ed.2d 373 (1980).

The Appeals Court is in direct conflict with this Court's decision in *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), wherein the Court noted a characteristic inherent in the concept of a "substantive rule." The Court described a substantive rule – or a "Legislative-type rule," id at 236, 94 S.Ct. at 1074, as one "affecting individual rights and obligations." Id at 232, 94 S.Ct. at 1073. This characteristic is an important touchstone for distinguishing those rules that may be "binding" or have the "force of law." Id at 235, 236, 94 S.Ct. at 1074.

CONCLUSION

For the reasons stated above and in his Petition, Petitioner respectfully prays that the Court issue the writ herein, or alternatively, that it vacate and remand in light of appropriate precedents of this Court.

Respectfully submitted,

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